

REMARKS

Applicants thank the Examiner for the thorough review of the application.

New drawings (Figs. 1 and 2) are submitted herewith to comply with the requirements of the Notice of Draftsperson's Patent Drawing Review attached to the Office Action of May 20, 2003. The objected photographs have been replaced with scanned images of better quality and the specification has been amended to reflect this.

Claims 33-36 and 48 have been cancelled without prejudice. Applicants expressly reserve themselves the rights to present the cancelled claims in a divisional or continuation application.

Claims 28-29, 37-46, and 49 have been amended.

The claims have been amended to address the Examiner's objections and rejections under 35 USC § 112, second paragraph.

Claim 37 has also been amended to better define the claimed invention, which does not require the triploid watermelon plants to be "evenly spaced". Support for the amendment is found for example at page 9, lines 14-15, of Applicants' specification.

No new matter has been added by way of amendment.

New claims 50-56 are presented.

Support for new claim 50, is found for example in claim 37 as originally filed and at page 3, lines 28-29, of Applicants' specification.

Support for new claim 51, is found in claim 38 as originally filed.

Support for new claim 52 is found for example at page 3, lines 22-23, and page 5, lines 15-16, of Applicants' specification. Support for new claim 53 is found for example in claim 37 as originally filed and at page 3, lines 28-29, of Applicants' specification..

Support for new claims 54-56 is found for example at page 4, lines 12-13, of Applicants' specification.

No new matter has been added by way of amendment.

Claim objections

The objections raised by the Examiner have been addressed by amendments to the claims. The Examiner's suggestions have been incorporated in claims 28-29, 37-46, and 49.

Step b) of claim 38 has been amended to recite "one-third to two-third". Support for the amendment is found at page 11, lines 6-13 (Example 5), of Applicants' specification. The recitation "one-half to two-third" in claim 39 falls within the range in amended claim 38, and it is submitted that claims 38 and 39 are now in proper dependent form. New claim 51, which is also dependent of claim 38, recites "one-third to one-half", which also falls within the range in amended claim 38.

Accordingly, it is respectfully submitted that the objections to the claims should be withdrawn.

Claim rejections - 35 USC § 112

Claims 28-49 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement

The following statement regarding the seeds deposit is provided below:

The undersigned agent of record states under his signature and registration number that the seeds deposited with ATCC under accession number PTA-4856 were deposited under the Budapest Treaty and that these seeds will be released irrevocably and without restriction or condition to the public upon issuance of a patent.

A copy of the deposit receipt for said seeds deposit is submitted herewith. It is noted that seeds of line NO1F3203B were deposited with ATCC under accession number PTA-4856 with the Identification Reference "SP-1", reflecting a change of designation of line NO1F3203B to its commercial designation "SP-1".

The undersigned agent of record also states under his signature and registration number that:

- a) during the pendency of the application, access to the invention will be afforded to the Commissioner upon request;
- b) all restrictions upon availability to the public will be irrevocably removed upon granting of the patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or the enforceable life of the patent, whichever is longer;
- d) the viability of the biological material at the time of deposit will be tested (see 37 CFR 1.807); and
- e) the deposit will be replaced if it should ever become inviable.

Accordingly, it is respectfully submitted that the rejection should be withdrawn.

Claims 33-49 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite

The rejections raised by the Examiner have been addressed by amendments to the claims. The Examiner's suggestions have been incorporated in claims 37-38, 40-46, and 49.

In particular, claims 37, 38, and 43-45 now incorporate a step of "allowing pollination of said triploid watermelon plants by pollen of said diploid watermelon plant to obtain triploid, seedless watermelon fruit". Support for the amendment is found for example at page 5, lines 15-16, of Applicants' specification. It is respectfully submitted that the claims are now complete.

Accordingly, it is respectfully submitted that the rejections should be withdrawn.

Claim rejections - 35 USC § 102 - 35 USC § 103

Claims 28-49 stand rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103 as obvious over Elmstrom (US Patent 6,355,865, filed 26 May 1999)

Applicants respectfully disagree with the Examiner's rejection.

The Pollenizer 1 taught by Elmstrom was derived from a USDA germline, which was selfed for several generations (Elmstrom, column 7, lines 5-8). In contrast, watermelon line NO1F3203B claimed in the instant application was obtained by crossing watermelon OW824 and hybrid watermelon OW823 (page 6, lines 1-9, of Applicants' specification).

Accordingly, Pollenizer 1 taught by Elmstrom and watermelon line NO1F3203B of the instant application were obtained independently, one by self-pollination of a germline, the other by cross-pollination.

It is well-known in the art that through crosses between plants a large number of recombination events occur leading to infinite number of germplasm combinations. This renders it practically impossible to obtain the exact same line in two independent breeding programs (see for example Richards A.J., Plant Breeding Systems, Chapter 2, page 14, 4th paragraph, and page 17, 2nd paragraph, selected portions of said chapter being submitted herewith to the Examiner's attention).

Accordingly, it is respectfully submitted that diploid watermelon line NO1F3203B of the claimed invention is novel over Elmstrom.

Based on the teachings of Elmstrom, it would also not have been obvious to one skilled in the art to obtain diploid watermelon line NO1F3203B of the claimed invention. On the contrary, it is through specific selection among populations of watermelon plants obtained after the cross between watermelon OW824 and hybrid watermelon OW823 that diploid watermelon line NO1F3203B was identified (see for example page 6, lines 10-20, of Applicants' specification). Nothing in Elmstrom teaches or suggests breeding, identifying and selecting diploid watermelon line NO1F3203B of the claimed invention.

Consequently, it is respectfully submitted that the claimed invention is non-obvious over Elmstrom.

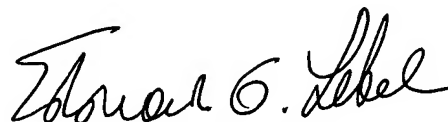
Accordingly, the rejection under 35 U.S.C. 102(e) or, in the alternative, under 35 U.S.C. 103 should be withdrawn.

In view of the above, it is respectfully submitted that all objections and rejections raised by the Examiner have been addressed, and that the application is now in condition for allowance. Early notice to this effect is solicited.

A Credit Card Payment Form is enclosed for the fee required for the three months extension of time. However, the Commissioner is also hereby authorized to charge any additional fees under 37 CFR §1.17, which may be required to maintain the pendency of the above application, to Deposit Account No. 50-1744 in the name of Syngenta Biotechnology, Inc.

If any additional information is needed or if, in the opinion of the Examiner, a telephone conference would expedite the prosecution of this subject application, the Examiner is invited to call the undersigned at (919) 765-5117.

Respectfully submitted,



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